see *Public Prosecutor* v. *Datuk Harun Idris (No.2)*[2]. Thus corroborative evidence need not be direct. It is sufficient if it is merely circumstantial evidence of the accused's connection with the offence. PW2's and PW3's testimonies are such evidence.

On reading the learned magistrate's decision as a whole it appears that he was too engrossed with moral considerations and the motive of PW1. He has repeatedly stated in his decision that PW1's evidence was fraught with dubiousity, suspicion and ulterior motive because in his view, a junior officer should not launch an investigation against another officer senior in rank to him. With respect, this is a wrong view to hold. In law there is nothing preventing a police inspector to institute investigation into a crime under the Prevention of Corruption Act, 1961, even involving his senior officers, especially when he was under the direction of his OCCI. Neither the Act itself, the C.P.C. nor the Police Act has provision bearing this. It has often been said that moral consideration is not ours to decide. The court is only concerned with the administration of law and within that jurisdiction to dispense justice.

The learned magistrate does not also seem to consider the presumption of law arising from cases of this nature under section 14 of the Prevention of Corruption Act, though this was brought to his attention during submissions by both counsel. In the present case, there is sufficient evidence showing that the gratification has been paid by the accused to PW1. In law, the presumption under section 14 arises for the defence of the accused to be called. See *Public Prosecutor* v. *Ng Kee Tiak*[3].

The accused's defence was one of denial. He said that PW1 had asked him for a loan of $20,000.00 but he never gave any money to PW1. He alleged that PW1 trapped him in alleging this offence against him because he had refused to co-operate in PW1's investigation against another DEP. The learned magistrate believed in the truthfulness of the explanation given by the accused having regard to the accused's demeanour.

It is obvious that the learned magistrate did not weigh the accused's defence as laid down in *Public Prosecutor* v. *Yuvaraj*[4].

"The burden of rebutting this presumption can be said to be discharged by a defence as being reasonable and probable."

A mere denial without other proof to reasonably dislodge the prosecution's evidence is not sufficient.

A magistrate is, of course, entitled to believe a witness at a trial but a general references to the demeanour of witnesses without more, gives rise to suspicion that an attempt is being made to bolster up a verdict which is contrary not only to the weight of the evidence but to the probabilities and which could not be supported on a detailed examination of the evidence. See *R.* v. *Low Toh Cheng*[5]. As shown in this case, the reliance by the learned magistrate on the demeanour of the accused is misplaced having regard to other evidence before him which he should have considered. See *Yap Fook Yew & Anor.* v. *Public Prosecutor*[6].

Upon the whole evidence and his grounds of decision in my judgment the learned magistrate has obstinately blundered and misdirected himself on many aspects of the evidence before him which led him to reach a distorted conclusion as to produce a positive miscarriage of justice. In this event, I have to allow this appeal and to set aside his order of acquittal of the accused and to order a retrial of this case by a different magistrate.

Order accordingly.

Solicitors: *David Tiong & Michael Ong.*

ONG HEOK & ANOR. v. OOI BEE TAT & ORS.

[O.C.J. (Gunn Chit Tuan J.) April 3 & 4, 1980]
[Penang – Civil Suit No. 66 of 1980]

Practice & Procedure – Writ of Summons – Variation of form used – Application to set aside for non-compliance under 0. 2 r. 3 – Waiver of right of unconditional appearance – Rules of the Supreme Court 1957, 0. 2 r. 3, 0. 12 r. 30, 0. 70 r. 1.

Practice & Procedure – Application for ex parte interim injunction – Affidavit in support of writ sworn one day before writ – Motion to set aside.

Company Law – Injunction to preserve property in status quo – Damages not adequate remedy – Injunction allowed.

The defendants applied to set aside the writ of summons and all subsequent proceedings for irregularity. The defendants claimed, *inter alia*, (a) the writ of summons was not similar to Form 3 in the First Schedule to the Rules, nor was it a general form of writ because it did not have an endorsement as in Form 2 in the First Schedule to the Rules; (b) the injunction was made on an affidavit which was sworn before the writ was issued and that the injunction was made on a motion supported by an improper affidavit.

Held, dismissing the defendants' application: (1) the defendants had made a mistake in entering an unconditional appearance in this action and they had in fact waived their rights to set aside the writ or service thereof for any irregularity in the writ of summons. Alternatively, it was only an irregularity to be dealt with under 0. 70 r. 1 of the Rules;

(2) if it had been brought to the court's attention before the Order of February 13, 1980 was made, that the affidavit in support of the application for injunction had been sworn before the issue of the writ, the court would and should have considered making the said Order subject to an undertaking by the first plaintiff to have her affidavit re-sworn and filed. However, it had not been shown, apart from the fact that it was sworn one day before the issue of the writ, that it was "improper";

(3) the first plaintiff's affidavit of February 8, 1980 contained sufficient material information to enable the court to consider and decide whether or not to grant or refuse an injunction. The plaintiffs had cause to fear that if the first defendant continued to mismanage the company, irreparable damage would be done to the second plaintiff company's assets;

(4) on the balance of convenience, an *interim* injunction should be granted in this case. The court was satisfied that there were substantial questions to be tried between the parties involving their rights as directors, the funds and assets of the second plaintiff company, the allotment of new shares of that company, and other alleged breaches under the Companies Act 1965. Until the action was tried, a case had been made out to preserve the property in the meantime in *status quo*;

(5) damages would not be an adequate remedy and that it would cause greater inconvenience to the plaintiffs if the injunction was not granted than the inconvenience which the defendants would be put to if the injunction was granted;

(6) in order to dissolve or vary an *ex parte* injunction, the defendants had to satisfy the court that the facts upon which the said injunction was granted no longer exist or that it was obtained by misrepresentation or suppression of material facts. The defendants in this case had not made out such a case.

Cases referred to:–

(1) *Sheldon* v. *Brown Bayley's Steel Works Ltd. & Dawnays Ltd.* [1953] 2 Q.B. 393; [1953] 3 W.L.R. 542; [1953] 2 All E.R. 894, C.A.
(2) *Hill* v. *Luton Corporation* [1951] 1 All E.R. 1028.
(3) *Sivaperuman* v. *Heah Seok Yeong Realty Sdn Bhd.* [1979] 1 M.L.J. 150.
(4) *Piercy* v. *S. Mills & Co Ltd.* [1920] L.R. 1 Ch. D. 77.
(5) *Punt* v. *Symons & Co Ltd.* [1903] L.R. 2 Ch. D. 506.
(6) *Federal Transport Service Company Ltd & Ors.* v. *Abdul Malik & Ors.* [1973] 1 M.L.J. 216.
(7) *Pender* v. *Lushington* (1877) L.R. 6 Ch. D. 70, 79.
(8) *Green* v. *Prior* (1886) W.N. 50.
(9) *Wah Loong (Jelapang) Tin Mine Sdn. Bhd.* v. *Chia Ngen Yiok* [1975] 2 M.L.J. 109, 110.
(10) *American Cyanamid Co.* v. *Ethicon Ltd.* [1975] 1 All E.R. 504, 510 – 511.
(11) *Nicholas & Ors.* v. *Gan Realty Sdn. Bhd & Ors.* [1970] 2 M.L.J. 89, F.C.
(12) *Gan Realty Sdn. Bhd. & Ors.* v. *Nicholas & Ors.* [1969] 2 M.L.J. 110, 111.

CIVIL SUIT.

N.G Sivanandan for the plaintiffs/respondents.

T.R. Hepworth & Lim Cheng Poh for the defendants/applicants.

Cur. Adv. Vult.

Gunn Chit Tuan J.: Ooi Bee Tat @ Ooi Bee Lee (hereinafter referred to as "the first defendant/applicant") and nine others (hereinafter referred to together with the first defendant/applicant as "the defendants/applicants") applied by notice of motion for an order that the writ of summons or the service thereof on them in this action and all subsequent proceedings may be set aside for irregularity with costs to be taxed and paid by the plaintiffs abovenamed (hereinafter referred to as "the first plaintiff" and "the second plaintiff company" respectively) on the ground that the said writ of summons did not comply with Order 2 rule 3 of the Rules of the Supreme Court, 1957, and that in the meantime all further proceedings be stayed. Alternatively, the defendants/applicants applied for the following orders:–

"1. that the Order made herein dated the 13th day of February 1980 may be discharged, or varied, and that the injunction thereby awarded restraining the Defendants from the acting as directors of the 2nd Plaintiff Company and from dealing with the funds of or using the seal of or dealing in any manner with the properties and assets of the 2nd Plaintiff Company or otherwise interfering with the management of the Company until the trial of this action may be dissolved;

2. that the amount of damages suffered by the Defendants be ascertained by the Senior Assistant Registrar of this Honourable Court and that the Defendants be at liberty to sign judgment on the amount so ascertained;

3. that Mr. Diong Chin Teck and Mr. Ong Guan Seng of Peat Marwick Mitchell & Co. the receivers appointed in this action may be discharged and that the bond, if any, entered into by the said Mr. Diong Chin Teck and Mr. Ong Guan Seng may be vacated;

4. that the costs of this application be taxed and paid by the plaintiffs to the Defendants."

As regards the first part of the said notice of motion, Mr. Hepworth, leading counsel for the de-

fendants/applicants referred to the said Order 2 rule 3, which requires a writ of summons for the commencement of an action, except in the cases in which any different form is provided, to be in Form 2 or Form 3 of the First Schedule to the said Rules, with such variations as circumstances may require. He then referred to Order 70 rule 1 regarding the effect of non-compliance with the said Rules, and having referred the court to the said Form 2 and Form 3, submitted that the writ of summons in this case was neither a specially endorsed writ because it was not similar to Form 3 in the First Schedule to the said Rules, nor was it a general form of writ because it did not have an endorsement as in Form 2 in the First Schedule to the said Rules.

On this procedural point raised by Mr. Hepworth, Mr. Sivanandan, counsel for the first plaintiff and the second plaintiff company, referred to Order 12 rule 30 of the Rules of the Supreme Court, 1957, which requires a defendant to enter a conditional appearance before taking out a summons or serving a notice of motion to set aside the writ or the service thereof. He submitted that the defendant/applicants have waived their rights to apply to the court to set aside the writ or service thereof for any alleged informality or irregularity as an unconditional appearance had been filed by their solicitors in this case. He referred to and relied on the case of *Sheldon* v. *Brown Bayley's Steel Works Ltd. and Dawnays Ltd.*[1] in support of his submission. Counsel also pointed out that the writ of summons in this action was accompanied by a statement of claim and the fact that the writ has not been endorsed did not give the defendants/applicants the right to set aside the writ and the service thereof for irregularity. He referred to the case of *Hill* v. *Luton Corporation*[2] in which it was held that the defect in the endorsement did not render the writ a nullity and void *ab initio*; there was no power to set aside a writ on the ground of a defective endorsement once the defect had been cured by delivery of a proper statement of claim.

Having heard the submissions of both counsel on this point, I considered and found that as the defendants/applicants' solicitors had on February 19, 1980 made a mistake in entering an unconditional appearance in this action, they have in fact waived their rights to set aside the writ or service thereof for any irregularity in the writ of summons. Even if I was wrong in this finding, I agreed with counsel for the first plaintiff and the second plaintiff company that it was only an irregularity to be dealt with under Order 70 rule 1 of the said Rules.

The main purpose of the said notice of motion was to seek a discharge of the court order of February 13, 1980 and for the dissolution of the temporary or interim injunction granted by me in that order. Mr. Hepworth referred to the affidavit of the first plaintiff affirmed on February 8, 1980 and pointed out that the writ in this action was issued on February 9, 1980. He then referred to the commentary on Order 50 rule 6 of the said Rules appearing at page 1205 of the *Annual Practice 1962* and stated that the injunction was made on an affidavit which was sworn before the writ was issued. He submitted that the said injunction was therefore made on a motion supported by an improper affidavit. Another complaint of Mr. Hepworth, after reference to the commentary on Order 50 rule 6 at page 1204 of the *Annual Practice 1962*, was that the said injunction should not have been made *'ex parte'* as there was no urgency and that there was ample time to serve the defendants/applicants. Yet another complaint of counsel, after reference to the commentary on Order 50 rule 6 at page 677 of Volume 1 of *Mallal's* Supreme Court Practice, 1957, was that the said injunction should not have been made "until further order" but should have been made "until the next chambers day".

The next point raised by Mr. Hepworth, after reference to the case of *Sivaperuman* v. *Heah Seok Yeong Realty Sdn. Bhd.*[3] was that the said injunction, though couched in prohibitory terms, was in effect a mandatory injunction ordering the Managing Director i.e. the first defendant/applicant to vacate the managing director's office for the receiver and manager to carry on his duties. Counsel also submitted that as the application for the said injunction was made and subsequently granted *'ex parte'* there should have been full disclosure and *'uberrima fides'*. He said that the plaintiffs had not made full disclosure regarding the relationship of the parties i.e. that the business was a family business worth $8,000,000.00 which was the fruit of a lifetime's work by the first defendant/applicant. The early history of the first defendant/applicant and the second plaintiff company was also not referred to and the fact that the first plaintiff is the first defendant/applicant's wife and that their son called Ooi Kim Keat had held the first defendant/applicant's power of attorney from April 1975 to February 1979 was also not disclosed. The facts that the first defendant/applicant is illiterate in English and that the company had failed to comply

with a clause in a deed of settlement relating to the completion of the houses of a building scheme, and lastly, that the issue of 120,000 shares to the first defendant/applicant was for cash to enable the company to reduce a bank over-draft, were all not stated in the body of the first plaintiff's affidavit of February 8, 1980. Finally Mr. Hepworth submitted that the company could only institute a suit if there was a company resolution.

As regards the urgency of the matter and the need to apply *ex parte* for an interim or temporary injunction, Mr. Sivanandan referred to the following paragraphs in the said affidavit of the first plaintiff affirmed on February 8, 1980:—

"4. Since the incorporation of the 2nd Plaintiff company, the board of directors had been the 1st Defendant, the 1st Plaintiff and Mr. Ooi Kim Keat, but the 1st Defendant through his solicitors, Messrs. Yussof, Lim Cheng Poh & Chong, sent a letter dated January 17, 1980 to the then Secretaries of the 2nd Plaintiff company, Messrs. Tan Choong & Partners of 229 Burmah Road, Penang and to the board of directors of the 2nd Plaintiff company informing that under Article 53 of the Articles of Association of the 2nd Plaintiff company the 1st Defendant has terminated the directorship of the 1st Plaintiff and Mr. Ooi Kim Keat and that new director or directors will be appointed by the 1st Defendant in due course. Further in the said letter, it was stated that the Secretary of the 2nd Plaintiff company was to be Mr. Loo Seng Poe of No. 4 Larut Road, Penang instead of Messrs. Tan Choong & Partners, and as a Managing Director for life of the 2nd Plaintiff company and pursuant to the Articles of Association of the 2nd Plaintiff company, the 1st Defendant unilaterally cancelled the company meeting due to be held on January 19, 1980 at 11.00 a.m at No. 229 Burmah Road, Penang. A copy of the said letter dated January 17, 1980 and a certified true copy of the Memorandum and Articles of Association of the 2nd Plaintiff company are now produced and shown to me and marked "OH 1" and "OH 2" respectively and xerox copies of the same are annexed hereto.

5. The 1st Plaintiff had requested for a company meeting in her letter of January 10, 1980 to the then Secretaries of the 2nd Plaintiff company, Messrs. Tan Choong & Partners for the purpose of appointing Miss Ooi Kim Eng and Miss Ooi Kim Lean as directors of the 2nd Plaintiff company. A copy of the said letter dated January 10, 1980 is now produced and shown to me marked "OH 3" and a xerox copy of the same is annexed hereto.

6. A notice dated January 12, 1980 was sent by the then said company's Secretaries calling for a meeting of directors of the 2nd Plaintiff company to be held at 229 Burmah Road, Penang on January 19, 1980 at 11.00 a.m. on the following agenda:—

(i) To confirm the minutes of the previous meeting held on March 27, 1979.

(ii) To discuss matters arising.

(iii) To consider the appointment of additional directors.

(iv) General.

A copy of the Agenda dated January 12, 1980 is now produced and shown to me marked "OH 4" and a xerox copy of the same is annexed hereto.

"9 The 1st Plaintiff made an inspection of the Register and Minute Book at the registered office of the 2nd Plaintiff company and found that the 2nd and the 3rd Defendants were appointed as directors of the 2nd Plaintiff company on January 22 & 25, 1980 respectively. The Register and Minute Book of the 2nd Plaintiff company further show that the board of directors of the 2nd Plaintiff company had allotted 120,000 shares to the 1st Defendant and 1 share each to the 2nd and 3rd Defendants. The Register and Minute Book further show that the 4th Defendant was appointed a director of the 2nd Plaintiff company on February 1, 1980 and was allotted a share in the 2nd Plaintiffs company.

10. The Plaintiffs contend that the removal of the 1st Plaintiff and Ooi Kim Keat as directors of the 2nd Plaintiff company and the appointment of new directors to the 2nd Plaintiff company and the allotment of new shares of the 2nd Plaintiff company was an abuse of the duties and responsibilities of the 1st Defendant as a Managing Director of the 2nd Plaintiff company. Further the 1st Defendant had abused his fiduciary powers by not acting in the *bona fide* interest for the general advantage of the 2nd Plaintiff company and the 1st Defendant's act in collaboration with the 2nd, 3rd and 4th Defendants were to maintain control over the affairs of the 2nd Plaintiff company and to defeat the wishes of the existing majority of shareholders."

It was therefore submitted by Mr. Sivanandan that the steps taken by the first defendant/applicant were solely to benefit himself and to defeat the free exercise of corporate membership rights which were enshrined in the laws of corporations and associations. Counsel also said that the first defendant/applicant was not acting in the interests of the company and had therefore abused his position as a permanent Managing Director by removing the first plaintiff and Ooi Kim Keat as directors and cancelling the said company meeting due to be held on January 19, 1980. It was contended that the purpose of the issue of the 120,000 shares by the first defendant/applicant to himself and the appointment of nine other directors was to defeat the purpose of an extraordinary general meeting to be held on February 29, 1980 called on the requisition of the first plaintiff and other shareholders of the company for the purpose of passing some resolutions including one for the cancellation of certain articles of association concerning the directors.

As regards the contention of the first defendant/applicant that an allotment of new shares was necessary as the company needed funds, Mr. Sivan-

andan urged the court to reject it in view of the huge debt amounting to $863,583.31 which he still owed the company as at February 1980. It was contended that the action of the first defendant/applicant was to enable him to control the affairs of the company and to defeat the wishes of the majority of shareholders. Counsel then referred to the case of *Piercy* v. *S. Mills & Company, Limited*[4] regarding the fiduciary power of directors in a company. It was held in that case that a power to issue shares in a limited company given to directors for the purpose of enabling them to raise capital when required for the purpose of the company is a fiduciary power to be exercised by them *bona fide* for the general advantage of the company, and when the company is in no need of further capital, directors are not entitled to use their power of issuing shares merely for the purpose of maintaining their control, or the control of themselves and their friends, over the affairs of the company, or merely for the purpose of defeating the wishes of the existing majority of shareholders. Counsel also referred to the case of *Punt* v. *Symons & Co. Ltd.*[5] in which case shares had been issued by the directors, not for the general benefit of the company, but for the purpose of controlling the holders of the greater number of shares by obtaining a majority of voting power and it was held that the directors ought to be restrained from holding the meeting at which the votes of the new shareholders were to have been used. Counsel also pointed out that the first defendant/applicant had not only failed as the permanent Managing Director of the company to make payments for work done on the said building or housing scheme of the company but had also been using the company's funds to pay his own trade creditors, and contended that the first plaintiff had disclosed all relevant and material facts in her affidavit before applying for the said injunction.

As regards the affidavit sworn by the first plaintiff before the writ in the action was issued, counsel referred the court to the following passage appearing at page 591 of volume 24 of *Halsbury's* Laws of England (4th edn.):–

"The affidavit should not, as a rule, be sworn until after the issue of the writ, but in exceptional cases the court may grant an interim order even though the affidavit was sworn before the issue of the writ. In such cases the court now requires the affidavit to be re-sworn and filed and the plaintiff is required to give an undertaking to have this done."

And in reply to Mr. Hepworth's arguments that the injunction granted in this case was a mandatory one, Mr. Sivanandan referred to the case of *Federal Transport Service Company Limited* and *Ors.* v. *Abdul Malik and Ors.*[6] and pointed out that the court in that case granted an injunction and also made an order for the appointment of a receiver and manager as there were serious disputes among their shareholders and their assets were in jeopardy. The court however limited the order until the affairs of the company were sorted out and until the company had a proper board of directors. Finally, on the point that there was no company resolution for the institution of proceedings by the second plaintiff company, counsel referred the court to the following passage at page 583 of *Gower's* Modern Company Law (3rd edn.):–

"Normally, therefore the company itself is the proper plaintiff, and the only proper plaintiff, in an action arising out of a dispute within the company. And the appropriate agency to start an action on the company's behalf is the board of directors, to whom this power is delegated as an incident of managing the company. However, it is well established that if the directors cannot or will not start proceedings in the company's name (and if they themselves are the defendants they obviously will not) the power to do so reverts to the general meeting. Hence, the practice has grown up of allowing anyone connected with the company to start proceedings in the company's name subject to the risk that the defendants will challenge his right to do so. In that event, the court will stay proceedings until a general meeting has been called to decide whether or not the company shall sue. If the decision is in favour of continuing, all is well. If, however, the decision is against action the proceedings will be dismissed, and the rash individual and his solicitors on the record will be liable for the costs. In practice, this means that there is little likelihood of prosecuting an action against the directors or other controllers so long as they remain in *de facto* control. Such proceedings are only likely if a new group has assumed control, or if the company has gone into liquidation and thus passed into the control of an independent liquidator, or if the Board of Trade is in a position to take action in the name of the company under its newly extended powers."

Counsel also referred to the following passage in the judgment of Jessel, M.R. in *Pender* v. *Lushington*[7] in which case it was held that the plaintiffs, who were shareholders in a company, were entitled to an injunction against the directors:–

"The first point to be considered is this: Supposing there was no objection to the right of a general meeting to direct an action to be brought, could I, even in that case, allow the company to sue? I think I could. In that case the general meeting, having a right to direct an action to be brought, would act by the majority of the members. The majority wish their rights to be protected. A meeting could be called, and, if the court was satisfied that the majority would direct an action to be brought, the company's name would not be taken away. In the meantime the court must act. It being decided that the company is a proper Plaintiff, that the grievance is one of which the company could complain,

that the majority of the company are of that opinion, and that there is no time to call a formal meeting, what is the court to do? Is it to refuse justice altogether, and say, it being a case for an injunction, that the directors are to have for several weeks (for the articles require three week's notice at least of a general meeting) the power of destroying the property and rights of the company altogether."

Having heard and considered the submissions of both counsel on the various points raised, I agreed that if it had been brought to my attention before I made the order of February 13, 1980, or if I had noticed that the said affidavit of the first plaintiff used in support of her application for an injunction had been sworn before the issue of the writ in this action, then I would and should have considered making the order of February 13, 1980 subject to an undertaking by the first plaintiff to have her affidavit re-sworn and filed (See *Green* v. *Prior*[8]). However it was not shown to me in what way the said affidavit was defective nor did I agree with learned counsel for the defendants/applicants that the first plaintiff's affidavit was, apart from the fact that it was sworn one day before the issue of the writ, "improper". As regards the necessity for an application for an injunction to be made *ex parte*, I agreed with Mr. Sivanandan, after reading the first plaintiff's affidavit of February 8, 1980, which, in my opinion, contained sufficient material information to enable the court to consider and decide whether or not to grant or refuse an injunction, that it would appear that the first defendant/applicant had exercised his position as a managing director for his own ends to the detriment of the majority of the shareholders and had also allowed his personal interests to conflict with that of the second plaintiff company which was and is involved in housing development and has to receive and make payments from time to time. The plaintiffs had cause to fear that if the first defendant/applicant continued to mismanage the company, irreparable damage would be done to the second plaintiff company's assets. In the circumstances of the case, applying the principles which have been so usefully set out by Abdoolcader J. in the case of *Wah Loong (Jelapang) Tin Mine Sdn. Bhd.* v. *Chia Ngen Yiok*[9], and having given heed to the matters which their Lordships in the House of Lords' case of *American Cyanamid Co.* v. *Ethicon Ltd.*[10] have advised should be considered in determining whether the balance of convenience lies in favour of granting or refusing interlocutory relief, I considered that an interim injunction should be granted in this case and therefore made the order of February 13, 1980. Although an injunction granted on an *ex parte* application would usually be until a certain day e.g. the next motion day, I also considered that it made no difference if the order granted was effective "until further order" because I had anticipated in this case, as in most other cases, that the party served with an order would file a notice of motion on the next chambers or motion day to seek an order for dissolution of the interim injunction, and if such party was successful in the application the court would of course make a further order to have the previous order discharged and the interim or temporary injunction dissolved.

As regards the effect of my order of February 13, 1980, I, with respect, disagreed with submission of Mr. Hepworth that it was in fact a mandatory injunction. The order merely restrained the defendants from acting as directors of the second plaintiff company and from dealing with the funds or using the seal of or dealing in any manner with the properties and assets of the second plaintiff company until the trial of this action. As in the case of *Federal Transport Services Company Ltd. & Ors.* v. *Abdul Malik and Ors.*,[6] I also considered the appointment of a receiver and manager necessary because there were disputes among the shareholders and the assets of the company were in jeopardy and, as in that case, I also ordered that the appointment be limited until the affairs of the company were sorted out and until the second plaintiff company had a proper board of directors.

Although Mr. Hepworth submitted that the company could only institute a suit if there was a company resolution, he did not quote any authority in support of that submission nor did he elaborate on his brief submission on that point. It would appear from the said passage quoted by Mr. Sivanandan from page 583 of *Gower's* Modern Company Law that anyone connected with the company may start proceedings in the company's name subject to the risk that the defendants will challenge his right in doing so; in that event the court will stay proceedings until a general meeting has been called to decide whether or not the company shall sue. In this case, the first plaintiff and the other shareholders (excluding the defendants) could therefore have started this action in the company's name and the court could have, if the defendants/applicants had seriously pressed and applied for an order to that effect stayed proceedings by the second plaintiff company until a general meeting of the company has been called.

In conclusion I would reiterate that the court, in applying the principles governing the grant or refusal of a temporary or interim injunction, was satisfied that there were substantial questions to be

tried between the parties involving their rights as directors, the funds and assets of the second plaintiff company, the allotment of new shares of that company, and other alleged breaches under the Companies Act, 1965, and that until the action was tried, a case had been made out for the preservation of the property in the meantime in *status quo*. (See *Nicholas & Ors.* v. *Gan Realty Sdn. Bhd. & Ors.*[11]) The court also considered that damages would not be an adequate remedy to the parties, especially to the plaintiffs and that it would cause greater inconvenience to the plaintiffs if the injunction was not granted than the inconvenience which the defendants would be put if the injunction was granted. On the other hand, in order to dissolve or vary an *ex parte* injunction, the defendants/applicants had to satisfy the court that the facts upon which the said injunction was granted no longer exist or that it was obtained by misrepresentation or suppression of material facts (Per Raja Azlan Shah J. (as he then was) in *Gan Realty Sdn. Bhd. & Ors.* v. *Nicholas & Ors*[12]). In the circumstances of this case I was satisfied that the defendants/applicants had not made out a case in favour of dissolution of the temporary or interim injunction granted by me on February 13, 1980. I therefore refused to exercise my discretion in favour of them and dismissed their said notice of motion with costs.

Order accordingly

Solicitors: *Presgrave & Matthews; Lim Cheng Poh & Chong.*

PUBLIC PROSECUTOR v. LIM RE SONG & ANOR.

[O.Cr.J. (Mohamed Azmi J.) July 24, 1981]

[Kuala Lumpur – Federal Territory Criminal Trial No. 12 of 1978]

Criminal Law & Procedure – Charge of being in possession of primed handgrenades – Whether "ammunition" – Internal Security Act 1960, ss. 2 & 57(1)(b).

Internal Security – "Ammunition" – Internal Security Act 1960, s. 2.

Internal Security – Charge of being in possession of handgrenades – Proof of exclusive control – Convicted and sentenced to death.

The first and second accused who were husband and wife were jointly charged for being in control of 9 primed handgrenades without lawful excuse and authority at a house in Setapak, an offence under section 57(1)(b) of the Internal Security Act 1960. This arose out of an early morning raid by the police acting on a tip-off. The house was cordoned and the front door was forced open by the police. One A.S.P. Salleh went to room 'K' and found it was locked. He banged the room door and requested it to be opened. The second accused unbolted it from the inside. Not far from the mattress on which the accused were sleeping, A.S.P. Salleh found a paper bag containing 9 primed hand-grenades and 27 pairs of jungle green shorts and jungle green trousers, 29 jungle green shorts, 12 grey hammocks, 1 piece of green cloth cut out for a cap and 6 pieces of putties. 2 sewing machines were also recovered from the house.

Held: (1) the Prosecution had established beyond reasonable doubt that both the accused had exclusive control of the 9 primed grenades and they also had full knowledge of their existence, and that they were in joint control of the incriminating exhibits at the material time;

(2) the handgrenades had been proved to be serviceable by an expert through examination and by exploding one of them; it is self-evident that they contain explosive and it is unnecessary to prove the type of explosive contained in the various parts of the handgrenades;

(3) in both cases the conduct of the accused as regards the uniforms gives rise to the necessary *mens rea* in that they knew that the uniforms were for unlawful purpose. The existence of the jungle green uniforms with the handgrenades is sufficient for the court to conclude by circumstantial evidence that both the accused had knowledge of the grenades at all material times.

Cases referred to:–

(1) *Public Prosecutor* v. *Sihabduin bin Haji Salleh & Anor.* [1980] 2 M.L.J. 273.
(2) *Public Prosecutor* v. *Chai Yee Ken* [1977] 1 M.L.J. 167.
(3) *Public Prosecutor* v. *Leong Kuai Hong* [1981] 1 M.L.J. 246.
(4) *R.* v. *Khoo Guan Teik* [1957] M.L.J. 128.
(5) *Lee It Leo* v. *R.* [1954] M.L.J. 215.
(6) *Sia Soon Suan* v. *Public Prosecutor* [1966] 1 M.L.J. 116.
(7) *Su Ah Ping* v. *Public Prosecutor* [1980] 1 M.L.J. 75.

[Cases cited but not mentioned in Judgment: *Chong Kim Seng* v. *Public Prosector* [1949] M.L.J. 109; *Saad Ibrahim* v. *Public Prosecutor* [1968] 1 M.L.J. 158; *Emperor* v. *Santa* A.I.R. 1944 Lah. 339; *Loke Tham Chuan* v. *Public Prosecutor* (1954) 3 M.C. 45; *Tan Too Kia* v. *Public Prosecutor* [1980] 2 M.L.J. 187; *Pyare Lal Bhargava* v. *State of Rajasthan* A.I.R. 1963 S.C. 1094; *Emperor* v. *Bhagwandas* A.I.R. 1941 Bom. 50; *Public Prosecutor* v. *Law Say Seck & Ors.* [1971] 1 M.L.J. 199; *Chan Pean Leon* v. *Public Prosecutor* [1956] M.L.J. 237; *Lockyer* v. *Gibb* [1966] 2 All E.R. 653; *Warner* v. *Metropolitan Police Commissioner* [1968] 2 All E.R. 356; *Teoh Sin Kuan* v. *Public Prosecutor* Selangor Cr. App. 14 of 1977 *(unreported)*; *Loh Chan Wan* v. *Public Prosecutor* [1939] M.L.J. 84; *Mat* v. *Public Prosecutor* [1963] M.L.J. 263; *Public Prosecutor* v. *Teh Cheng Poh* [1980] 1 M.L.J. 251; *Kong Wai & Anor.* v. *Public Prosecutor* [1948-1949] M.L.J. Supp. 170; *Lee Yoon Choy & Ors.* v. *Public Prosecutor* [1948-1949] M.L.J. Supp. 167; *Tai Chai Keh* v. *Public Prosecutor* [1948-1949] M.L.J. Supp. 105; *Saminathan & Ors.* v.